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AN ACT

RELATING TO CRIMINAL SENTENCING; REDEFINING PENALTIES FOR CHILD ABUSE; IMPOSING A LIFE SENTENCE FOR INTENTIONAL ABUSE OF A CHILD LESS THAN TWELVE YEARS OF AGE THAT RESULTS IN THE CHILD'S DEATH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended by Laws 2004, Chapter 10, Section 1 and by Laws 2004, Chapter 11, Section 1) is amended to read:

"30-6-1. ABANDONMENT OR ABUSE OF A CHILD.--

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

1           B. Abandonment of a child consists of the parent,  
2 guardian or custodian of a child intentionally leaving or  
3 abandoning the child under circumstances whereby the child  
4 may or does suffer neglect. Whoever commits abandonment of a  
5 child is guilty of a misdemeanor, unless the abandonment  
6 results in the child's death or great bodily harm, in which  
7 case he is guilty of a second degree felony.

8           C. A parent, guardian or custodian who leaves an  
9 infant less than ninety days old in compliance with the Safe  
10 Haven for Infants Act shall not be prosecuted for abandonment  
11 of a child.

12           D. Abuse of a child consists of a person  
13 knowingly, intentionally or negligently, and without  
14 justifiable cause, causing or permitting a child to be:

15                   (1) placed in a situation that may endanger  
16 the child's life or health;

17                   (2) tortured, cruelly confined or cruelly  
18 punished; or

19                   (3) exposed to the inclemency of the  
20 weather.

21           E. Whoever commits abuse of a child that does not  
22 result in the child's death or great bodily harm is, for a  
23 first offense, guilty of a third degree felony and for second  
24 and subsequent offenses is guilty of a second degree felony.

25 If the abuse results in great bodily harm to the child, he is

1 guilty of a first degree felony.

2 F. Whoever commits negligent abuse of a child that  
3 results in the death of the child is guilty of a first degree  
4 felony.

5 G. Whoever commits intentional abuse of a child  
6 twelve to eighteen years of age that results in the death of  
7 the child is guilty of a first degree felony.

8 H. Whoever commits intentional abuse of a child  
9 less than twelve years of age that results in the death of  
10 the child is guilty of a first degree felony resulting in the  
11 death of a child.

12 I. Evidence that demonstrates that a child has  
13 been knowingly, intentionally or negligently allowed to enter  
14 or remain in a motor vehicle, building or any other premises  
15 that contains chemicals and equipment used or intended for  
16 use in the manufacture of a controlled substance shall be  
17 deemed prima facie evidence of abuse of the child.

18 J. A person who leaves an infant less than ninety  
19 days old at a hospital may be prosecuted for abuse of the  
20 infant for actions of the person occurring before the infant  
21 was left at the hospital."

22 Section 2. Section 31-18-15 NMSA 1978 (being Laws 1977,  
23 Chapter 216, Section 4, as amended) is amended to read:

24 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
25 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS

1 DEDUCTIONS.--

2 A. If a person is convicted of a noncapital  
3 felony, the basic sentence of imprisonment is as follows:

4 (1) for a first degree felony resulting in  
5 the death of a child, life imprisonment;

6 (2) for a first degree felony, eighteen  
7 years imprisonment;

8 (3) for a second degree felony resulting in  
9 the death of a human being, fifteen years imprisonment;

10 (4) for a second degree felony for a sexual  
11 offense against a child, fifteen years imprisonment;

12 (5) for a second degree felony, nine years  
13 imprisonment;

14 (6) for a third degree felony resulting in  
15 the death of a human being, six years imprisonment;

16 (7) for a third degree felony for a sexual  
17 offense against a child, six years imprisonment;

18 (8) for a third degree felony, three years  
19 imprisonment; or

20 (9) for a fourth degree felony, eighteen  
21 months imprisonment.

22 B. The appropriate basic sentence of imprisonment  
23 shall be imposed upon a person convicted and sentenced  
24 pursuant to Subsection A of this section, unless the court  
25 alters the sentence pursuant to the provisions of Section

1 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

2 C. The court shall include in the judgment and  
3 sentence of each person convicted and sentenced to  
4 imprisonment in a corrections facility designated by the  
5 corrections department authority for a period of parole to be  
6 served in accordance with the provisions of Section 31-21-10  
7 NMSA 1978 after the completion of any actual time of  
8 imprisonment and authority to require, as a condition of  
9 parole, the payment of the costs of parole services and  
10 reimbursement to a law enforcement agency or local crime  
11 stopper program in accordance with the provisions of that  
12 section. The period of parole shall be deemed to be part of  
13 the sentence of the convicted person in addition to the basic  
14 sentence imposed pursuant to Subsection A of this section  
15 together with alterations, if any, pursuant to the provisions  
16 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA  
17 1978.

18 D. When a court imposes a sentence of imprisonment  
19 pursuant to the provisions of Section 31-18-15.1, 31-18-16,  
20 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the  
21 basic sentence of imprisonment provided pursuant to the  
22 provisions of Subsection A of this section, the period of  
23 parole shall be served in accordance with the provisions of  
24 Section 31-21-10 NMSA 1978 for the degree of felony for the  
25 basic sentence for which the inmate was convicted. For the

1 purpose of designating a period of parole, a court shall not  
2 consider that the basic sentence of imprisonment was  
3 suspended or deferred and that the inmate served a period of  
4 imprisonment pursuant to the provisions of Section  
5 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

6 E. The court may, in addition to the imposition of  
7 a basic sentence of imprisonment, impose a fine not to  
8 exceed:

9 (1) for a first degree felony resulting in  
10 the death of a child, seventeen thousand five hundred dollars  
11 (\$17,500);

12 (2) for a first degree felony, fifteen  
13 thousand dollars (\$15,000);

14 (3) for a second degree felony resulting in  
15 the death of a human being, twelve thousand five hundred  
16 dollars (\$12,500);

17 (4) for a second degree felony for a sexual  
18 offense against a child, twelve thousand five hundred dollars  
19 (\$12,500);

20 (5) for a second degree felony, ten thousand  
21 dollars (\$10,000);

22 (6) for a third degree felony resulting in  
23 the death of a human being, five thousand dollars (\$5,000);

24 (7) for a third degree felony for a sexual  
25 offense against a child, five thousand dollars (\$5,000); or

1 (8) for a third or fourth degree felony,  
2 five thousand dollars (\$5,000).

3 F. When the court imposes a sentence of  
4 imprisonment for a felony offense, the court shall indicate  
5 whether or not the offense is a serious violent offense, as  
6 defined in Section 33-2-34 NMSA 1978. The court shall inform  
7 an offender that the offender's sentence of imprisonment is  
8 subject to the provisions of Sections 33-2-34, 33-2-36,  
9 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform  
10 an offender that the offender's sentence is subject to those  
11 provisions or if the court provides the offender with  
12 erroneous information regarding those provisions, the failure  
13 to inform or the error shall not provide a basis for a writ  
14 of habeas corpus.

15 G. No later than October 31 of each year, the New  
16 Mexico sentencing commission shall provide a written report  
17 to the secretary of corrections, all New Mexico criminal  
18 court judges, the administrative office of the district  
19 attorneys and the chief public defender. The report shall  
20 specify the average reduction in the sentence of imprisonment  
21 for serious violent offenses and nonviolent offenses, as  
22 defined in Section 33-2-34 NMSA 1978, due to meritorious  
23 deductions earned by prisoners during the previous fiscal  
24 year pursuant to the provisions of Sections 33-2-34, 33-2-36,  
25 33-2-37 and 33-2-38 NMSA 1978. The corrections department

1 shall allow the commission access to documents used by the  
2 department to determine earned meritorious deductions for  
3 prisoners."

4 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,  
5 Chapter 28, Section 1, as amended) is amended to read:

6 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

7 A. An inmate of an institution who was sentenced  
8 to life imprisonment as the result of the commission of a  
9 capital felony, who was sentenced to life imprisonment as the  
10 result of a conviction for a first degree felony resulting in  
11 the death of a child, who was convicted of three violent  
12 felonies and sentenced pursuant to Sections 31-18-23 and  
13 31-18-24 NMSA 1978 or who was convicted of two violent sexual  
14 offenses and sentenced pursuant to Subsection A of Section  
15 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978 becomes  
16 eligible for a parole hearing after he has served thirty  
17 years of his sentence. Before ordering the parole of an  
18 inmate sentenced to life imprisonment, the board shall:

19 (1) interview the inmate at the institution  
20 where he is committed;

21 (2) consider all pertinent information  
22 concerning the inmate, including:

23 (a) the circumstances of the offense;

24 (b) mitigating and aggravating

25 circumstances;

1 (c) whether a deadly weapon was used in  
2 the commission of the offense;

3 (d) whether the inmate is a habitual  
4 offender;

5 (e) the reports filed under Section  
6 31-21-9 NMSA 1978; and

7 (f) the reports of such physical and  
8 mental examinations as have been made while in an  
9 institution;

10 (3) make a finding that a parole is in the  
11 best interest of society and the inmate; and

12 (4) make a finding that the inmate is able  
13 and willing to fulfill the obligations of a law-abiding  
14 citizen.

15 If parole is denied, the inmate sentenced to life  
16 imprisonment shall again become entitled to a parole hearing  
17 at two-year intervals. The board may, on its own motion,  
18 reopen any case in which a hearing has already been granted  
19 and parole denied.

20 B. Unless the board finds that it is in the best  
21 interest of society and the parolee to reduce the period of  
22 parole, a person who was convicted of a capital felony shall  
23 be required to undergo a minimum period of parole of five  
24 years. During the period of parole, the person shall be  
25 under the guidance and supervision of the board.

1           C. Except for sex offenders as provided in Section  
2 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,  
3 second or third degree felony and who has served the sentence  
4 of imprisonment imposed by the court in an institution  
5 designated by the corrections department shall be required to  
6 undergo a two-year period of parole. An inmate who was  
7 convicted of a fourth degree felony and who has served the  
8 sentence of imprisonment imposed by the court in an  
9 institution designated by the corrections department shall be  
10 required to undergo a one-year period of parole. During the  
11 period of parole, the person shall be under the guidance and  
12 supervision of the board.

13           D. Every person while on parole shall remain in  
14 the legal custody of the institution from which he was  
15 released, but shall be subject to the orders of the board.  
16 The board shall furnish to each inmate as a prerequisite to  
17 his release under its supervision a written statement of the  
18 conditions of parole that shall be accepted and agreed to by  
19 the inmate as evidenced by his signature affixed to a  
20 duplicate copy to be retained in the files of the board. The  
21 board shall also require as a prerequisite to release the  
22 submission and approval of a parole plan. If an inmate  
23 refuses to affix his signature to the written statement of  
24 the conditions of his parole or does not have an approved  
25 parole plan, he shall not be released and shall remain in the

1 custody of the institution in which he has served his  
2 sentence, excepting parole, until such time as the period of  
3 parole he was required to serve, less meritorious deductions,  
4 if any, expires, at which time he shall be released from that  
5 institution without parole, or until such time that he  
6 evidences his acceptance and agreement to the conditions of  
7 parole as required or receives approval for his parole plan  
8 or both. Time served from the date that an inmate refuses to  
9 accept and agree to the conditions of parole or fails to  
10 receive approval for his parole plan shall reduce the period,  
11 if any, to be served under parole at a later date. If the  
12 district court has ordered that the inmate make restitution  
13 to a victim as provided in Section 31-17-1 NMSA 1978, the  
14 board shall include restitution as a condition of parole.  
15 The board shall also personally apprise the inmate of the  
16 conditions of parole and his duties relating thereto.

17 E. When a person on parole has performed the  
18 obligations of his release for the period of parole provided  
19 in this section, the board shall make a final order of  
20 discharge and issue him a certificate of discharge.

21 F. Pursuant to the provisions of Section 31-18-15  
22 NMSA 1978, the board shall require the inmate as a condition  
23 of parole:

24 (1) to pay the actual costs of his parole  
25 services to the adult probation and parole division of the

1 corrections department for deposit to the corrections  
2 department intensive supervision fund not exceeding one  
3 thousand eight hundred dollars (\$1,800) annually to be paid  
4 in monthly installments of not less than twenty-five dollars  
5 (\$25.00) and not more than one hundred fifty dollars (\$150),  
6 as set by the appropriate district supervisor of the adult  
7 probation and parole division, based upon the financial  
8 circumstances of the defendant. The defendant's payment of  
9 the supervised parole costs shall not be waived unless the  
10 board holds an evidentiary hearing and finds that the  
11 defendant is unable to pay the costs. If the board waives  
12 the defendant's payment of the supervised parole costs and  
13 the defendant's financial circumstances subsequently change  
14 so that the defendant is able to pay the costs, the  
15 appropriate district supervisor of the adult probation and  
16 parole division shall advise the board and the board shall  
17 hold an evidentiary hearing to determine whether the waiver  
18 should be rescinded; and

19 (2) to reimburse a law enforcement agency or  
20 local crime stopper program for the amount of any reward paid  
21 by the agency or program for information leading to his  
22 arrest, prosecution or conviction.

23 G. The provisions of this section shall apply to  
24 all inmates except geriatric, permanently incapacitated and  
25 terminally ill inmates eligible for the medical and geriatric

